IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

CRL.A.No. 1166 of 2001()

CC.9/1999 of CHIEF JUDICIAL MAGISTRATE COURT, KOTTAYAM
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APPELLANT:

THOMAS JOSEPH, MATTAPPALLIL MARUKALEL,
POOVARANI KARA AND VILLAGE, KOTTAYAM DIST.

BY ADV. SRI.MATHEW JOHN (K)

RESPONDENTS:
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1. M/S. EWIN PHARMA NO.64, MADURAI STREET,
AYANAVARAM, CHENNAI-23 A
PARTNERSHIP FIRM REP. BY THE PARTNER
V. VADAKKEDAM, NO.53/1,
PALAYAKARA STREET, AYANAVARAM, CHENNAI-23.

2. THOMAS T. VADAKKEDOM, 53/1
PALAYAKKARA STREET, AYANAVARAM,
CHENNAI-23.

3. BANSI JOSEPH, 53/1, PALAYAKKARA STREET,
AYNAVARAM CHENNARI-23.

4. STATE OF KERALA REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R1 TO R3-BY ADV. SRI.MATHEW SEBASTIAN
R4- BY P.P.SRI.PUZHAKKARA MOHAMMED

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 2O/09/2007, ALONG WITH CRA NO. 1178 OF 2001 CRA NO. 1182 OF 2001 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.A.NOS.1166, 1178 & 1182 OF 2001

Dated this the 20th day of September, 2007.

JUDGMENT

These three appeals have been filed by the three different complainants against the same three accused and these cases were tried by the trial court jointly and disposed of by a common judgment by which, the respondents/accused in all the complaints were acquitted. Against the judgment of the trial court, these appeals are filed. The common case before the trial court against the common accused was that the accused/respondents owed Rs.2,50,000/=, Rs.3,00,000/= and Rs.3,50,000/= respectively to the complainants in C.C.Nos.9,10 and 11 of 1999 on the file of the Chief Judicial Magistrate, Kottayam. As per the complaints filed by the respective complainants, it was alleged that for the discharge of the said amounts, Exts.P1, P8 and P20 cheques were issued by the respondents/accused and when the cheques were presented for encashment through the Banks of the complainants, all the cheques were dishonoured on the ground of insufficiency of funds with the account of the respondents. Complying the statutory provisions regarding notice and on finding that the amounts covered by the

cheques were not paid by the respondents, the complaints have been filed before the court. To prove the charge against the respondents under Section 138 of the N.I.Act, three witnesses were examined and Exts.P1 to P27 were produced. On closing the evidence adduced on behalf of the complainants/appellants, the respondents were questioned under Section 313 of the Code. The respondents denied the entire allegations contained in the respective complaints. DW1 was also examined to prove the case of the respondents that all the cheques in question were not issued by the respondents in discharge of any legally enforcible debt. Exts.D1 to D10 were also relied on by the defence side. After considering the entire evidence adduced before the court on joint trial of the cases, the trial court found that the appellants/complainants failed to prove that the respondents have issued the cheques in question in discharge of any legally enforcible debt and the respondents were acquitted.

2. Heard the counsel appearing on either side. It is the case of the appellants/complainants before the court that the respondents owed a total amount of Rs. Nine lakhs to the complainants. To prove the case, the complainants relied on the evidence of PWs 1

to 3. But, the trial court found that the evidence of Pws 1 to 3 would not show that the cheques in question were issued by the respondents in discharge of any legally enforcible debt. To come to this conclusion, the trial court had considered all aspects of the complainants' case. Firstly, the trial court found that the complainants failed to prove the transaction between the appellants/complainants and the respondents which led to issuance of the cheques in question. To prove the execution, the complainants relied on the signatures or the seals in the cheques in question. But, the trial court found that as per the principles laid down by this Court and also the Apex Court, the signature in the cheques or signing of the cheques by itself will not prove that there existed any transaction between the complainants and the respondents. In this context, the trial court also found that as per the evidence adduced by DW1, it was an admitted fact before the court, that Sri. Benny Joseph was one of the partners of the 1st respondent firm on certain times and he was also in custody of some of the records of the 1st respondent firm. In this context, it was also came out in evidence that 8 or 9 cheques of the 1st respondent firm were found lost during the year 1997. It was also spoken to by DW1 that the cheques were lost in travel. However, the 2nd

respondent - the 2nd partner of the 1st respondent had already intimated loss of the cheques to the Bank of the 1st respondent firm in time. If so, the explanation given by respondents that the cheques in question were though signed by the 2nd respondent, all the cheques were found lost and an intimation was already given to the Bank. Further, the trial court found that there was a suit pending before the Civil Court at Chennai restraining interference of the affairs of the 1st respondent firm by Benny Joseph, one of the partners of the firm, and none else son-in-law of PW1. Apart from this finding, the trial court also came to the conclusion that all the cheques in question were materially altered as it was seen that the contents in the cheques were not written by any of the accused except the signature found that of the 2nd respondent. Coupled with the above evidence, the trial court also accepted the evidence adduced by DW1 and the case set up by the respondents under Section 313 of the Code to the effect that the cheques were found lost and the same were misused by the complainants for filing complaints against the respondents. On the above analysis of the evidence by the trial court, this Court even after re-appreciation of the evidence found that there exists no circumstance or ground to interfere with the judgment of the trial court unless and until this

Court is satisfied that there are circumstances to interfere with the judgment of the court, this Court will refrain from interfering such appeals. In the above circumstances, all these appeals fail and are dismissed accordingly.

K. THANKAPPAN, JUDGE.

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K. THANKAPPAN, J.

CRL.A.Nos.1166,1178&1182/01

JUDGMENT

20th September, 2007.